

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

OSSUR HOLDINGS, INC. and  
GENERATION II, USA, INC.,

Plaintiffs,

v.

BELLACURE, INC., et al.,

Defendants.

CASE NO. C05-1552JLR

ORDER TO SHOW CAUSE

**I. INTRODUCTION**

This matter comes before the court on Plaintiffs' motion for a temporary restraining order (Dkt. # 3). Plaintiffs have not served any Defendant with their motion, with the complaint in this action, or with any other pleading. For the reasons stated below, the court DENIES Plaintiffs' motion for ex parte relief, and orders Plaintiffs to serve Defendants with all pleadings on file in this action along with this order. Defendants shall have five days from the date of service to show cause why the court should not enter a temporary restraining order.

**II. BACKGROUND & ANALYSIS**

Plaintiffs Ossur Holdings, Inc. and Generation II, USA, Inc. develop and sell prosthetic and orthotic devices, including devices for the treatment of osteoarthritic knee

1 pain. Defendant Bellacure Inc. (“Bellacure”) is engaged in a similar business. Defendant  
2 Shane Sterling is the founder and principal officer of Bellacure. Defendant Maurice  
3 Cannon is the Executive Vice President of Bellacure. Both individual Defendants  
4 formerly worked for the Plaintiffs. Mr. Sterling resigned in April 2004; Mr. Cannon  
5 resigned in September 2004.<sup>1</sup>

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7 Without assessing the merits of Plaintiffs’ claims, the court finds that Plaintiffs  
8 have not met the standard for issuing a temporary restraining order without notice to the  
9 Defendants. Under Fed. R. Civ. P. 65(b), an ex parte temporary restraining order can  
10 issue only if:

- 11 (1) it clearly appears from specific facts shown by affidavit or by the  
12 verified complaint that immediate and irreparable injury, loss, or  
13 damage will result to the applicant before the adverse party or that  
14 party’s attorney can be heard in opposition, and  
15 (2) the applicant’s attorney certifies to the court in writing the efforts, if  
16 any, which have been made to give the notice and the reasons  
17 supporting the claim that notice should not be required.

18 The court is not persuaded that Plaintiffs will suffer irreparable injury before the  
19 Defendants can be notified of their request for injunctive relief. The principal basis of  
20 Plaintiffs’ motion is Defendants’ alleged misappropriation of their trade secrets. Without  
21 delving into the potential merit of this claim, the court finds no indication that Plaintiffs  
22 will suffer irreparable harm if Defendants are given the opportunity to respond to their  
23 request for injunctive relief. The same is true of Plaintiffs’ claim for injunctive relief  
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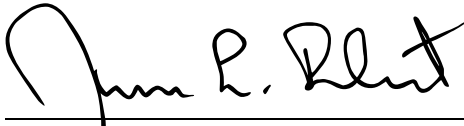
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25 <sup>1</sup>The sole basis for the court’s jurisdiction over this action is its jurisdiction over Plaintiffs’  
26 Lanham Act claim, its jurisdiction under 28 U.S.C. § 1338(b) over the related Washington unfair  
27 competition claim, and the court’s supplemental jurisdiction over Plaintiffs’ remaining state law  
28 claims under 28 U.S.C. § 1367(a). In responding to this order to show cause, Defendants may  
address whether the court should decline to exercise supplemental jurisdiction under 28 U.S.C.  
§ 1367(c).



1 an oral response. If appropriate, the court will order a hearing after reviewing  
2 Defendants' response to this order to show cause.

3 Dated this 13th day of September, 2005.  
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8 JAMES L. ROBART  
9 United States District Judge  
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